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6  
7 UNITED STATES DISTRICT COURT  
8  
9 FOR THE EASTERN DISTRICT OF WASHINGTON

10  
11 ENRIQUE JEVONS as managing Case No. 1:20-cv-03182-SAB  
12 member of Jevons Properties LLC,  
13 JEVONS PROPERTIES LLC,  
14 FREYA K. BURGSTALLER as  
trustee of the Freya K. Burgstaller  
15 Revocable Trust, JAY GLENN and  
16 KENDRA GLENN,

**COMPLAINTFIRST AMENDED  
COMPLAINT**

17 Plaintiffs,

18 vs.

19 JAY INSLEE, in his official  
20 capacity of the Governor of the  
21 State of Washington and ROBERT  
22 FERGUSON, in his official capacity  
23 of the Attorney General of the State  
24 of Washington,

25 Defendants.

26 Comes now, Richard M. Stephens and Stephens & Klinge LLP,  
27 Attorneys at Law, on behalf of Plaintiffs Enrique Jevons as managing  
28 **COMPLAINTFIRST AMENDED COMPLAINT - 1**

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1 member of Jevons Properties LLC, Jevons Properties LLC, Freya K.  
2 Burgstaller as trustee of the Freya Burgstaller Revocable Trust, Jay  
3 Glenn and Kendra Glenn and allege as follows:

4 **INTRODUCTION**  
5

6 1. In the wake of the novel coronavirus, Defendant Governor Jay  
7 Inslee, State of Washington, ("Defendant" or "Governor") State of  
8 Washington hastily instituted a series of emergency proclamations  
9 numbered as Proclamation 20-19 through 20-19.4 which prohibit people  
10 who provide rental housing from exercising their contractual and  
11 statutory remedies to evict tenants who have no right to remain in their  
12 property. These includes tenants who refuse to pay rent for any or no  
13 reason whatsoever, knowing that they cannot be evicted for not paying  
14 rent and cannot be charged any late fees or be subject to an enforceable  
15 debt or obligation that is collectable for being delinquent on rental  
16 payments.  
17

18 2. Plaintiffs are sympathetic to tenants who have actually suffered  
19 hardship due to the COVID-19 Pandemic. Plaintiffs have every  
20 incentive to work with those tenants who do not have the financial  
21 means to pay all or some portion of their rent. However, the  
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1 Proclamations actively undermine any such attempts at cooperation  
2 and allow tenants who have the ability to pay all or some of their rent  
3 to ignore and ultimately escape their contractual obligations for the  
4 foreseeable future regardless of whether they have been financially  
5 harmed by the Pandemic.  
6

7  
8 3. While many businesses have suffered as a result of the Pandemic,  
9 the owners of rental property are the only people who are required by  
10 any of the Governor's emergency proclamations to continue to provide a  
11 good or service without charge. Stores and restaurants lost business  
12 opportunities due to the Pandemic, but they were not required to  
13 continue to provide goods or food to customers without an ability to  
14 charge for the items they sold. The Governor's Proclamations regarding  
15 eviction require housing providers to continue to provide rental housing  
16 without an ability to insist that tenants pay for the privilege they  
17 purchased when they voluntarily entered into their leases.  
18  
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20 4. Additionally, the owners of rental property are still required to pay  
21 property taxes and, in many situations, pay for sewer, water, garbage  
22 services even though the tenants in their property are not paying rent.  
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28 **COMPLAINTFIRST AMENDED COMPLAINT** - 3

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1       5. The Proclamations violate the rights of people who provide rental  
2       housing by destroying a fundamental feature of their contracts,  
3  
4       oppressively placing on them the burden of providing free housing to  
5       any and all tenants instead of properly spreading the burden on the  
6       public as a whole, and essentially mandating that their property be  
7  
8       used for private use by tenants, a burden which is absolutely prohibited  
9  
10      by Article I, Section 16 of the Washington state constitution.

## **JURISDICTION AND VENUE**

13        6. This action arises under the Article I, Section 9 and the Fifth and  
14 Fourteenth Amendments to the United States Constitution and 42  
15 U.S.C. § 1983. Accordingly, this Court has federal question jurisdiction  
16 pursuant to 28 U.S.C. §§ 1331 and 1333. This action also seeks relief for  
17 violation of state constitutional rights pursuant to Article I, ~~Section 10~~  
18 and Section 16 of the Washington state constitution (the ~~“Contracts~~  
19 ~~Clause” and “Takings Clause,” respectively~~). This Court has jurisdiction  
20 over ~~thisese~~ state law based claims through supplemental jurisdiction  
21 pursuant to 28 U.S.C. § 1337(a). This Court has authority to award the  
22 requested declaratory and injunctive relief pursuant to 28 U.S.C. § 2201.

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1 28 U.S.C. § 1343(a) and 42 U.S.C. §§ 1983 and 1988(a); and award  
2 recovery of attorney's fees pursuant to 42 U.S.C. § 1988(b).  
3

4 7. Venue is proper in this district pursuant to 28 U.S.C. §§ 1331(b)(1)  
5 and (2) because a substantial part of the events giving rise to Plaintiff's  
6 claims occurred in this district and all of the property that is the subject  
7 of this action is situated in this district.  
8

9

10 **PARTIES**

11 8. Plaintiff Enrique Jevons is the managing member and owner of  
12 Jevons Properties LLC which owns residential rental property rented to  
13 tenants in Yakima, Washington. Mr. Jevons is a resident of Yakima  
14 County.  
15

16 9. Plaintiff Freya K. Burgstaller is the trustee of the Freya K.  
17 Burgstaller Revocable Trust, the owner of residential rental property  
18 which is rented to tenants in Yakima, Washington. Freya Burgstaller is  
19 a resident of Yakima County.  
20

21 10. Plaintiffs Jay and Kendra Glenn are the owners of residential  
22 rental property which is rented to tenants in Yakima, Washington. The  
23 Glenns are residents of Utah.  
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28 **COMPLAINTFIRST AMENDED COMPLAINT** - 5

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1       11. Defendant Jay Inslee (Governor) is sued herein in his official  
2 capacity as the Governor of the State of Washington, who is the  
3 promulgator of the Proclamations and the executive officer with the  
4 responsibility to enforce his Proclamations. Because this case seeks only  
5 declaratory and injunctive relief, Jay Inslee is a “person” who can be  
6 subject to suit under 42 U.S.C. §§ 1983 and 1988.  
7  
8

10      12. Robert Ferguson is sued in his official capacity as Attorney  
11 General of the State of Washington who has responsibility for and who  
12 has undertaken responsibility for enforcing the Proclamations. Because  
13 this case seeks only declaratory and injunctive relief, Robert Ferguson  
14 is a “person” who can be subject to suit under 42 U.S.C. §§ 1983 and  
15  
16 1988.  
17  
18

#### STANDING

20      13. Plaintiffs have standing because they own rental properties in  
21 this Court’s district and are directly impacted by the Proclamations’  
22 restrictions on Plaintiffs’ businesses, livelihoods and property.  
23  
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25      14. Plaintiffs have standing to bring their claims since they are  
26 aggrieved by the Governor’s unconstitutional Proclamations, which  
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1 have the effect of forcing Plaintiffs to bare alone a public burden by  
2 entirely destroying Plaintiffs' ability to collect rent, exclude nonpaying  
3 or rule breaking tenants and/or otherwise use their properties as they  
4 rightfully so choose.  
5

6

### **FACTUAL ALLEGATIONS**

7

#### **A. Plaintiffs and their Property**

8

10. Jevons Properties LLC owns properties which it rents to tenants  
9 in Yakima, Washington. Enrique Jevons is the owner and managing  
11 member of Jevons Properties LLC. One property which Jevons  
12 Properties LLC owns has a tenant which is several months behind in  
13 rent. Enrique understands that he cannot evict a tenant who is not  
14 paying rent because of the Governor's Proclamations.  
15

16. The Freya K. Burgstaller Revocable Trust was created as its  
17 name suggests by Freya Burgstaller. Freya came to Yakima in the  
18 1960s and found a home she wanted to purchase. However, the seller  
19 insisted that whoever bought the home had to also buy the seller's  
20 second home. Freya realized the only way to obtain the house she  
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1 wanted was to acquire two homes and rent one to others. That is how  
2 she entered the rental property business.  
3

4 17. Renting property is hard work and sometimes one needs to take  
5 on the unpleasant task of evicting a tenant. In March of 2020, Freya  
6 attempted to evict a tenant who had stopped paying rent and created  
7 enough noise in her unit that Freya's other neighboring tenant  
8 repeatedly complained. During the eviction process, it became clear that  
9 eviction was banned by the Governor's Proclamation in effect at the  
10 time. So Freya is still forced to have a tenant in her property who is not  
11 paying rent and who creates noise problems for other tenants. Freya's  
12 hands are effectively tied.  
13  
14

15 18. Plaintiffs Jay and Kendra Glenn own several properties which he  
16 rents to tenants in Yakima. The Glenns have tenants who have not paid  
17 rent for seven months. Nonetheless, the Glenns are still required to pay  
18 sewer, water, and garbage services and pay taxes for unit from which he  
19 is not recovering any rent.  
20  
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22 **B. The Outbreak of COVID-19**  
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1       19. The global COVID-19 pandemic (“Pandemic”) brought on by the  
2       Novel Coronavirus has caused catastrophic and unprecedented  
3       economic damage across the globe, and with it, significant loss of life  
4       and fundamental changes to both world and national economies. The  
5       Pandemic has turned the world upside-down, causing profound damage  
6       to the lives of all Americans and to the national economy. To be sure,  
7       State of Washington and U.S. officials have faced tremendous adversity  
8       in planning, coordinating, and at times, executing effective nationwide  
9       and statewide policies to protect the general public’s health, safety and  
10       welfare during this time of crisis. However, the Proclamations, as well-  
11       intentioned as they may be, have had an unlawful and disparate impact  
12       on housing providers.

13       20. In response to the outbreak in the State of Washington, on  
14       February 29, 2020, Governor Inslee issued a “State of Emergency”  
15       Order to address the threat of the spread of the Pandemic throughout  
16       Washington’s communities. Governor Inslee subsequently issued  
17       Proclamation No. 20-25 on March 23, 2020, which, among other things,  
18       mandated that “all individuals living in the State of Washington” were

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1 to "stay home or at their place of residence except as needed to maintain  
2 the continuity of operations of the critical infrastructure sectors and  
3 other "essential services."

4

5 **C. The Governor's Eviction-Related Proclamations**

6

7 21. On March 18, 2020, Governor Inslee issued Proclamation 20-19.  
8 In relevant part, the Order purported to suspend provisions of state law  
9 that would allow the providers of residential rental housing to evict  
10 tenants even if they were able to pay rent but chose not to do so. The  
11 Proclamation stated it was to remain in effect until April 17, 2020.  
12

13 22. On April 16, 2020, Governor Inslee issued Proclamation No. 20-  
14 19.1 which remained in effect until June 4, 2020. This Proclamation,  
15 like the others before it, has three provisions which Plaintiffs contend  
16 are in violation of constitutional rights as explained below. Those  
17 provisions are:  
18

19 a. A prohibition on evictions (Eviction Moratorium), which is not tied  
20 to anything related to the Pandemic. However, it is subject to  
21 exceptions where the lessor (a) provides an affidavit that the eviction is  
22 necessary to respond to a significant and immediate risk to the health,  
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1 safety, or property of others created by the resident; or (b) provides at  
2 least 60 days' written notice of intent to (i) personally occupy the  
3 premises as a primary residence, or (ii) sell the property.

4  
5 b. A prohibition on imposing fees for late payment (Suspension of  
6 Late Fees), regardless of whether the Pandemic has impacted the  
7 tenant's ability to pay and the inability to treat unpaid rent as a debt or  
8 financial obligation. The inability to treat unpaid debt as a financial  
9 obligation of the tenant is lifted only if the lessor offers the tenant and  
10 the tenant refused or failed to comply with, a repayment plan that was  
11 reasonable based on the individual financial, health, and other  
12 circumstances of that resident. However, there is no corresponding  
13 obligation of tenants to cooperate with the development of a repayment  
14 plan and tenants may to provide information that would enable the  
15 creation of a repayment plan that is reasonable based on the tenant's  
16 financial, health and other circumstances.

17  
18 23. On June 2, 2020, Governor Inslee issued Proclamation 20-19.2,  
19 which was to remain in effect until August 1, 2020. On July 24, 2020,  
20 Governor Inslee issued Proclamation 20-19.3, which was to remain in  
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28 COMPLAINTFIRST AMENDED COMPLAINT - 11

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1 effect until October 15, 2020. On October 14, 2020, Governor Inslee  
2 issued Proclamation 20-19.4, a true and correct copy of which is  
3 attached hereto as Appendix A. It remains in effect until December 31,  
4 2020. The restrictions described above are included in all of these  
5 Proclamations with some variation in each.

6  
7  
8 24. While purportedly intended to provide relief to tenants impacted  
9 by the Pandemic, the Proclamations are not tailored to a tenant's actual  
10 inability to pay rent and significantly (and needlessly) infringe on the  
11 constitutional rights of housing providers within the State of  
12 Washington. This action seeks a ruling that Proclamations 20-19  
13 through 20-19.4 are illegal and the enforcement of Proclamation 20-19.4  
14 should be enjoined.

15  
16 25. Proclamation 20-19.4, among other things, prohibits housing  
17 providers from initiating or continuing residential eviction proceedings  
18 based upon non-payment of rent. While Proclamation 20-19.4 provides  
19 no relief for housing providers and requires them to continue meeting  
20 their contractual and statutory obligations as lessors, it completely  
21 abrogates the material obligations of lessees and eliminates all the  
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1 contractual remedies housing providers ordinarily have when tenants  
2 breach their lease provisions. Under the Proclamations, tenants may  
3 continue to occupy their respective premises at no charge, utilizing the  
4 water, power, trash, sewage, and other fees that the housing providers  
5 must continue to pay without reimbursement. By stripping all remedies  
6 away from owners – without requiring tenants to demonstrate an  
7 inability to pay rent – the Proclamations create a legal disincentive for  
8 tenants who can pay all or some of what they owe from doing so because  
9 there is no recourse for such calculated behavior.

14 26. The Proclamations fail to address how a housing provider would  
15 be able to collect rent from those tenants who take advantage of the  
16 Eviction Moratorium. Indeed, the Governor has banned housing  
17 providers from pursuing their primary remedy (eviction) needed to  
18 mitigate damages where the tenant fails to pay rent and then went a  
19 step further by proclaiming that such nonpayment could not be enforced  
20 as a debt or legal obligation. Every month a housing provider is  
21 prevented from renting its unit to a paying tenant is a month for which  
22 the housing provider cannot mitigate any damages. This Eviction  
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28 COMPLAINTFIRST AMENDED COMPLAINT - 13

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1 Moratorium forces owners to allow tenants who have stopped paying  
2 and to continue to occupy their units for many months and likely well  
3 into 2021 and beyond. Because unpaid rent is declared to not be an  
4 enforceable debt or obligation under the Proclamations, there is no hope  
5 for housing providers to be made whole.

6  
7  
8 27. The impact of the Proclamations is thus particularly devastating  
9 because housing providers are forced to give up collection of rent and  
10 effectively give interest-free loans of an indefinite time period to tenants  
11 regardless of whether those tenants have any Pandemic-related  
12 inability to pay. The Proclamations also require housing providers to  
13 financially support their tenants during the Pandemic by subsidizing  
14 tenants' rent, utilities and other charges without any support to the  
15 housing provider.

16  
17 28. As set forth below, this action requests the Court to declare the  
18 Proclamations in the 20-19 series illegal and unenforceable because  
19 they violate the United States and Washington Constitutions, on the  
20 grounds that they improperly interfere with Plaintiffs' contracts and  
21 due process rights and constitute an improper uncompensated taking of  
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1 the fundamental property rights of Plaintiffs, and such taking is  
2 unconstitutional because it is for the private use of tenants and not a  
3 public use.

4  
5 29. If allowed to stand, the Proclamations will not only continue to  
6 violate Plaintiff's rights under both the Washington and United States  
7 Constitutions, but will continue to inflict massive and widespread  
8 economic damage on housing providers throughout the State, while  
9 unconstitutionally shifting the entire economic burden of the Pandemic  
10 as it relates to housing onto the backs of owners of rental housing,  
11 including Plaintiffs, who have already been financially impacted by the  
12 Pandemic. Plaintiffs similarly rely on rental income to maintain and  
13 secure their properties. Plaintiffs are also required to pay the  
14 substantial property taxes, utility fees and other assessments on their  
15 respective properties, which taxes, fees and assessments rely on a flow  
16 of rental income.

17  
18 30. Moreover, the Proclamations are not "narrowly tailored" to  
19 further any compelling governmental interest. On the contrary, while  
20 the Proclamations were ostensibly intended to protect tenants from  
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28 COMPLAINTFIRST AMENDED COMPLAINT - 15

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1 being evicted due to their inability to pay rent, this goal could have been  
2 achieved by far less intrusive means, including, but not limited to: (a)  
3 permitting the courts to hear each case on its own merits and fashion  
4 relief appropriate to the specific positions of the affected housing  
5 providers and tenants, thereby protecting tenants from immediate  
6 eviction but also providing protection to housing providers from  
7 excessive periods of non-payment; (b) requiring tenants to substantiate  
8 the criteria for qualifying for protection under the Proclamations  
9 through documentation or other evidence; (c) providing housing  
10 providers an opportunity to challenge a tenant's claimed qualification  
11 for protection under the Proclamations; (d) providing tenants with the  
12 means to pay rent in order to satisfy the State's tenant protection goals,  
13 without requiring housing providers owners to bear the burden of  
14 significant non-payment of rent; and/or (e) compensating housing  
15 providers when a tenant fails to pay rent.

23 31. Instead, the Proclamations remove any remedy for housing  
24 providers when tenants do not pay rent (or violate rules) and they give  
25 tenants a present sense that they are not contractually bound to pay  
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1 **any** portion of rent for an indefinite period of time. The Proclamations  
2 prohibit any legal means by which housing providers, such as Plaintiffs,  
3 can continue to collect rent from those with the ability to pay even a  
4 portion of their rent.

5  
6 32. Accordingly, Plaintiffs bring this action challenging the  
7 constitutionality of the Proclamations, which have deprived Plaintiffs of  
8 their fundamental rights and liberties embodied in both the  
9 Washington and United States Constitutions. In doing so, Plaintiffs  
10 seek the following remedies:

11  
12 a. Equitable and injunctive relief to enjoin the Governor's and  
13 Attorney General's enforcement of the Proclamations;  
14  
15 b. Declaratory relief from this Court that the Proclamations violate  
16 Plaintiffs' constitutional rights as follows:  
17  
18 i. The Proclamations violate the Contracts Clause of Article I, Section  
19 10 of the United States Constitution ~~and Article I Section 23 of the~~  
20  
21 ~~Washington Constitution;~~  
22  
23 ii. The Proclamations violate the federal constitutional right to be  
24 free from arbitrary, capricious, unreasonable or unduly oppressive

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1 regulations of their property inherent in the Due Process Clause  
2 protection of the Fourteenth Amendment of the United States  
3 Constitution;

## FIRST CLAIM FOR RELIEF

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## Violation of the Contracts Clause, Art. 1, § 10 of the United States Constitution (Declaratory Relief Under 42 U.S.C. § 1983)

33. Plaintiffs incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

34. Because Defendants are sued only for prospective declaratory and injunctive relief, they constitute “persons” who are potentially liable under the Civil Rights Act, 42 U.S.C. Section 1983. *Hafer v. Melo*, 502 U.S. 21 (1991).

35. Any relief afforded to tenants that is justified by the public health emergency, in order not to contravene Plaintiffs' constitutional rights, can only be of character appropriate to that emergency and granted only upon reasonable conditions. *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 445 (1934). In cases of leases, the Supreme Court has observed that relief may be appropriate where "the relief afforded was temporary and conditional; that it was sustained because of the emergency due to scarcity of housing; and that provision was made for reasonable compensation to the landlord during the period he was

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1      prevented from regaining possession.” *Id.* at 441-442 (emphasis  
2      added).  
3

4      36. Here, however, the Proclamations are neither “appropriate,” nor  
5      granted upon “reasonable conditions.” The relief afforded is neither  
6      temporary nor conditional. Nor do the Proclamations provide for  
7      “reasonable compensation” to housing providers. Indeed, the Eviction  
8      Moratorium expressly allows tenants to remain in possession without  
9      paying any rent during the emergency period. The Proclamations are  
10     not reasonable or appropriate to any legitimate end. *Blaisdell*, 290 U.S.  
11     at 438.  
12  
13

14     37. The Proclamations have caused damage to Plaintiffs who have  
15     no remedies available to them by which to recover the losses caused by  
16     their tenants’ non-payment of rent.  
17  
18

19     38. “To be sure, individual rights secured by the Constitution do not  
20     disappear during a public health crisis.” *In re Abbott*, 954 F.3d 772, 784  
21     (5th Cir. 2020). Fundamental and unalienable rights are by their very  
22     nature “essential” – they are the same essential rights which led to the  
23     founding of this country and this state. For, “[h]istory reveals that the  
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1 initial steps in the erosion of individual rights are usually excused on  
2 the basis of an 'emergency' or threat to the public. But the ultimate  
3 strength of our constitutional guarantee lies in the unhesitating  
4 application in times of crisis and tranquility alike." *United States v.*  
5 *Bell*, 464 F.2d 667, 676 (2d Cir. 1972) (Mansfield, J., concurring).

6  
7 39. "Emergency does not create power. Emergency does not increase  
8 granted power or remove or diminish the restrictions imposed upon  
9 power granted or reserved. The Constitution was adopted in a period of  
10 grave emergency. Its grants of power to the federal government and its  
11 limitations of the power of the States were determined in light of  
12 emergency, and they are not altered by emergency. What power was  
13 thus granted and what limitations were thus imposed are questions  
14 which have always been, and always will be, the subject of close  
15 examination under our constitutional system." *Blaisdell*, 290 U.S. at  
16 426.  
17  
18 40. The Contracts Clause, Art. 1, § 10, of the United States  
19 Constitution, provides: "No State shall . . . pass any . . . Law impairing  
20 the Obligation of Contracts." The Contracts Clause applies to cities and  
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28 COMPLAINTFIRST AMENDED COMPLAINT - 21

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1 prohibits cities from enacting ordinances that substantially impair  
2 Plaintiff's existing, lawful contracts.  
3

4       41. The Ninth Circuit Court of Appeals has ruled that Contracts  
5 Clause violations are indeed actionable under 42 U.S.C. § 1983.  
6  
7 Specifically, the Ninth Circuit has stated: "The right of a party not to  
8 have a State, or a political subdivision thereof, impair its obligations of  
9 contract is a right secured by the first article of the United States  
10 Constitution. A deprivation of that right may therefore give rise to a  
11 cause of action under section 1983." *Southern California Gas Co. v. City*  
12  
13 *of Santa Ana*, 336 F.3d 885, 887 (9th Cir. 2003).  
14

15       42. In determining whether a contractual impairment is substantial,  
16 courts consider "the extent to which the law undermines the contractual  
17 bargain, interferes with a party's reasonable expectations, and prevents  
18 the party from safeguarding or reinstating his rights." *Sveen v. Melin*,  
19 138 S.Ct. 1815, 1822 (2018). The eviction ban substantially impairs  
20 residential leases because the ability to evict is a cornerstone of the  
21 contractual bargain, destroys the housing providers' reasonable  
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28 **COMPLAINTFIRST AMENDED COMPLAINT** - 22

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1 expectations and completely prevents the owner from safeguarding his  
2 or her investment and reinstating its rights to payment or possession.  
3

4 43. “Contracts … are impaired within the meaning of the  
5 Constitution (article I, § 10, cl. 1) whenever the right to enforce them by  
6 legal process is taken away or materially lessened.” *Lynch v. United*  
7 *States*, 292 U.S. 571, 580 (1934). And deprivation of the remedy to  
8 enforce a contractual obligation has long remained a substantial  
9 impairment. “[I]t is manifest that the obligation of the contract, and the  
10 rights of the party under it, may, in effect, be destroyed by denying a  
11 remedy altogether.” *Bronson v. Kinzie*, 42 U.S. 311, 317 (1843). That is  
12 exactly what the Proclamations do.

13 44. If a court determines that a law works a substantial impairment,  
14 it then considers “whether the state law is drawn in an ‘appropriate’  
15 and ‘reasonable’ way to advance ‘a significant and legitimate public  
16 purpose.’” *Sveen*, 138 S.Ct. at 1822 (quoting *Energy Reserves Grp., Inc.*  
17 *v. Kansas Power & Light Co.*, 459 U.S. 400, 411-12 (1983)). A law that  
18 provides a “benefit to special interests” is not appropriate or reasonable.  
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20 *Id.* at 412.

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28 **COMPLAINTFIRST AMENDED COMPLAINT** - 23

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1       45. Whereas here a law substantially impairs a contract, the public  
2 entity bears the burden of showing that the impairment is both  
3 reasonable and necessary. *United States Trust Co. v. New Jersey*, 431  
4 U.S. 1, 31 (1977).

5       46. A Contract Clause analysis follows three steps. *See RUI One*  
6 *Corp. v. City of Berkeley*, 371 F.3d 1137, 1147 (9th Cir. 2004). First, a  
7 court examines whether the law creates a “substantial impairment” of  
8 contractual obligations. *Id.* (quoting *Allied Structural Steel Co. v.*  
9 *Spannaus*, 438 U.S. 234, 244 (1978)). If yes, then the court asks  
10 whether the government has a “significant and legitimate public  
11 purpose” designed to solve a “broad and general social or economic  
12 problem” as opposed to offering “a benefit to special interests.” *Id.*  
13 (quoting *Energy Ress. Group, Inc. v. Kan. Power & Light Co.*, 459 U.S.  
14 400, 412 (1983)). If so, then the court asks whether the law “is based  
15 upon reasonable conditions and is of a character appropriate to the  
16 public purpose justifying the legislation’s adoption.” *Id.* (quoting *United*  
17 *States Trust Co. v. New Jersey*, 431 U.S. 1, 22 (1977)).

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28 **COMPLAINTFIRST AMENDED COMPLAINT** - 24

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1       47. The Eviction Moratorium causes a substantial impairment of  
2 residential lease agreements by removing all practical remedies for  
3 contractual violations. It offers a benefit to a particular group—  
4 residential tenants—at the expense of the housing providers, rather  
5 than the public as a whole.

6  
7       48. A substantial impairment of a contract must be “tailored to the  
8 emergency that it was designed to meet.” *Allied Structural Steel Co.*,  
9 438 U.S. at 242. And it is unnecessary and unreasonable when “an  
10 evident and more moderate course would serve [the state’s] purposes  
11 equally well.” *United States Trust of New York*, 431 U.S. at 31. The  
12 current Proclamation claims as its rationale the unemployment  
13 prompted by Pandemic-related business shutdowns is likely to make it  
14 difficult for tenants to pay rent.

15  
16       49. But removal of the contractual remedy is not tailored to this  
17 emergency. It prohibits evictions regardless of a tenant’s employment or  
18 ability to pay. Not only is the contractual right to receive payment  
19 jeopardized—a housing provider cannot evict a tenant for violations of a

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28 COMPLAINTFIRST AMENDED COMPLAINT - 25

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1 lease unrelated to rent, such as rules related to the welfare of other  
2 tenants.  
3

4 50. The Proclamations' ban on rent collection is not tailored to the  
5 emergency either. Housing providers are prohibited from treating  
6 unpaid rent as an enforceable debt and bringing a breach-of-contract  
7 action. But the Governor's interests in preventing homelessness are not  
8 furthered by preventing the housing provider from bringing an action to  
9 recover overdue rent.  
10  
11

12 51. Under these standards, the Proclamations violate the Contracts  
13 Clause of the United States Constitution. The Eviction Moratorium  
14 fundamentally overturns the contractual bargains struck between  
15 Plaintiffs and their tenants by effectively relieving the tenants of their  
16 obligation to pay rent and comply with other provisions of their leases  
17 and leaving housing providers, like Plaintiffs, without any recourse for  
18 an undetermined period of time. Under the Eviction Moratorium,  
19 housing providers are required to allow tenants to remain on the  
20 properties rent free for an unspecified duration of time, thus depriving  
21 Plaintiffs of the opportunity to collect any portion of rent from their  
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28 COMPLAINTFIRST AMENDED COMPLAINT - 26

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1 current tenants, or otherwise rent their properties to tenants who can  
2 pay rent. Such Proclamations are the quintessential “substantial”  
3 impairment, as they “undermine the contractual bargain, interferes  
4 with a party’s reasonable expectations, and prevents the party from  
5 safeguarding or reinstating his rights.” *Sveen*, 138 S.Ct. at 1822. As a  
6 result of the issuance and enforcement of the Proclamations,  
7 Defendants have violated Plaintiff’s constitutional rights to the free use  
8 of their properties. The Proclamations abrogate Plaintiff’s contractual  
9 rights in that they permit tenants to unilaterally violate the terms of  
10 their leases, without the housing provider’s consent.  
11  
12

13 52. The Eviction Moratorium further unilaterally rewrites all  
14 residential leases within the State of Washington. The complete  
15 obliteration of Plaintiffs’ contracts and tenants’ obligations to pay rent  
16 under such contracts is not a reasonable way of achieving any  
17 legitimate purpose. Accordingly, the contractual impairments  
18 effectuated by the enactment and enforcement of the Proclamations  
19 violate the Contracts Clause and are thus unconstitutional.  
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28 COMPLAINTFIRST AMENDED COMPLAINT - 27

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10 54. Unless the Attorney General and Governor are enjoined and  
11 restrained from enforcing or threatening to enforce the Proclamations,  
12 Plaintiffs will be irreparably injured. Plaintiffs will be deprived of rights  
13 guaranteed under the United States Constitution, and will continue to  
14 suffer substantial loss of rents, profits, and good will, the nature and  
15 extent of which will be extremely difficult or impossible to ascertain.  
16  
17

19       55. Finally, the Governor's conduct has required Plaintiffs to incur  
20 attorneys' fees and costs of suit to bring this action, and Plaintiffs are  
21 entitled to attorneys' fees and costs under 42 U.S.C. § 1983 *et seq.* and  
22 42 U.S.C. § 1988(b).  
23

## SECOND CLAIM FOR RELIEF

28 | COMPLAINT FIRST AMENDED COMPLAINT - 28

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1           **Violation of the Contracts Clause of Art. I, § 23 of the Washington**  
2           **Constitution (Declaratory relief under Rev. Code of Wa. 7.24.010)**

3  
4           **56. Plaintiffs incorporate herein by reference each and every**  
5           **allegation contained in the preceding paragraphs of this Complaint as**  
6           **though fully set forth herein.**

7  
8           **57. The Proclamations substantially impair Plaintiffs' rights and the**  
9           **tenants' obligations under existing leases and/or rental agreements. By**  
10           **allowing tenants to withhold rent payments, the State has unlawfully**  
11           **impaired the tenants' contractual obligations, leaving no recourse for**  
12           **housing providers, such as the Plaintiffs.**

13  
14           **58. The Governor effectively seeks to destroy Plaintiffs' lease**  
15           **agreements and contract rights and to shift the entire cost of providing**  
16           **housing onto Plaintiffs. In doing so, the Governor substantially impairs**  
17           **the obligations of the existing lease and/or rental agreements without**  
18           **justification, and in direct violation of the Contracts Clause.**

19  
20           **59. Plaintiffs desire an immediate declaration of their rights arising**  
21           **out of all the facts and circumstances alleged herein and the**  
22           **concomitant obligations of its tenants to pay rent. Such declaration is**

1 necessary and appropriate at this time inasmuch as Plaintiffs are being  
2 irreparably injured and will continue to suffer irreparable injury in the  
3 form of lost constitutional rights, and loss of use of their properties until  
4 a declaration of their rights is made.  
5

6 60. Additionally, unless the Governor is enjoined and restrained from  
7 enforcing or threatening to enforce the Proclamations, Plaintiffs will be  
8 irreparably injured. Plaintiffs will be deprived of rights guaranteed  
9 under the Washington Constitution, and will continue to suffer  
10 substantial loss of rents and profits, the nature and extent of which will  
11 be extremely difficult or impossible to ascertain. Plaintiffs have no  
12 adequate remedy at law to prevent or redress the irreparable injury  
13 alleged herein.  
14

15 61. Plaintiffs seek a declaratory judgment of rights and obligations  
16 under the Washington Uniform Declaratory Judgment Act, Chapter  
17 7.24 Rev. Code Wa. and Civil Rule 57. An actual dispute exists between  
18 Plaintiffs and the Defendants whose interests are genuinely opposing in  
19 nature. These disputed interests are direct and substantial. A judicial  
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COMPLAINTFIRST AMENDED COMPLAINT - 30

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1 ~~determination can provide a final and conclusive resolution as to the~~  
2 ~~parties' rights and responsibilities.~~  
3

4 **THIRD CLAIM FOR RELIEF**

5 **Violation of the Takings Clause of the Fifth Amendment to the**  
6  
**United States Constitution**

7  
8 **(Declaratory relief under 42 U.S.C. § 1983)**

9  
10 5662. Plaintiffs incorporate herein by reference each and every  
11 allegation contained in the preceding paragraphs of this Complaint as  
12 though fully set forth herein.

13  
14 5763. The Takings Clause, present in the Fifth Amendment to the  
15 United States Constitution, provides that private property shall not “be  
16 taken for public use, without just compensation.” Fifth Amendment to  
17 the U.S. Constitution.

18  
19 5864. The purpose of the Takings Clause is to “bar Government from  
20 forcing some people alone to bear the public burdens which, in all  
21 fairness and justice, should be borne by the public as a whole.” *Lingle v.*  
22  
*Chevron Corp.*, 544 U.S. 528, 537 (2005) (quoting *Armstrong v. United*  
23  
*States*, 364 U.S. 40, 49 (1960)). Government action may violate the

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28 **COMPLAINTFIRST AMENDED COMPLAINT** - 31

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1 Takings Clause where it is “the functional equivalent [of] the classic  
2 taking in which government directly appropriates private property or  
3 ousts the owner from his domain.” *Id.* at 539.

4  
5 **6559.** The United States Supreme Court has repeatedly  
6 acknowledged that takings liability under the Fifth Amendment to the  
7 United States Constitution may be redressed under 42 U.S.C. § 1983.  
8

9  
10 **606.** The Proclamations referenced herein fall squarely within the  
11 “physical occupation” line of cases the United States Supreme Court has  
12 held constitute “per se” categorical takings for which the government is  
13 required to pay “just compensation.” The Proclamations force housing  
14 providers who own the rented property to accept the occupation of  
15 tenants without any payment of rent or compliance with rules  
16 concurrent with the occupancies. The Proclamations do nothing to  
17 protect Plaintiffs from losses they have and will undoubtedly continue  
18 to sustain when such tenants are unable to pay their rental obligations  
19 in the future or to compensate Plaintiffs for the rent they could have  
20 obtained from new paying tenants if the State did not indefinitely ban  
21 evictions. This is exacerbated by the fact that housing providers still  
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28 **COMPLAINTFIRST AMENDED COMPLAINT** - 32

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1 have obligations to pay for sewer, water and garbage removal for the  
2 nonpaying tenant. The Governor's Proclamation has thus eliminated  
3 the housing providers' fundamental constitutional right to exclude  
4 nonpaying or rule-breaking tenants from their respective properties. As  
5 Justice Thurgood Marshall proclaimed in *Loretto v. Teleprompter*  
6 *Manhattan CATV Corp.*, 458 U.S. 419, 436 (1982), "property law has  
7 long protected an owner's expectation that he will be relatively  
8 undisturbed at least in the possession of his property" and "[t]o require,  
9 as well, that the owner permit another to exercise complete dominion  
10 literally adds insult to injury." As the Supreme Court acknowledged,  
11 "our cases uniformly have found a taking to the extent of the occupation,  
12 without regard to whether the action achieves an important public  
13 benefit or has only minimal impact on the owner." *Id.* at 435.  
14  
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20 6<sup>17</sup>. The Proclamations and the enforcement thereof have caused a  
21 regulatory and physical taking of Plaintiffs properties without just  
22 compensation in violation of the Takings Clause of the Fifth  
23 Amendment to the U.S. Constitution.  
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28 COMPLAINTFIRST AMENDED COMPLAINT - 33

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1       628. Not only do the Proclamations take property interests of  
2 Plaintiffs without payment of just compensation, the taking of these  
3 property interests are not for public use but for the private use of  
4 tenants. In fact, residential tenancies are for private uses and the public  
5 has no right to use them for any purpose. Because the taking of  
6 Plaintiffs' property by the Proclamations is for private and not public  
7 use, it is barred by the Fifth and Fourteenth Amendments to the United  
8 States Constitution.

9       7063. Plaintiffs have no adequate remedy at law and will suffer  
10 serious and irreparable harm to their constitutional rights unless the  
11 Governor is enjoined from implementing and enforcing the Eviction  
12 Moratorium.

13       7164. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled  
14 to declaratory relief and temporary, preliminary, and permanent  
15 injunctive relief invalidating and restraining enforcement of the  
16 Eviction Moratorium.

17       7265. Plaintiff found it necessary to engage the services of private  
18 counsel to vindicate the rights of its members under the law. Plaintiffs

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1 are therefore entitled to an award of attorney's fees pursuant to 42  
2 U.S.C. § 1988.  
3

4 **FOURTH THIRD CLAIM FOR RELIEF**  
5

6 **Violation of the Takings Clause of Art. I, § 16 of the Washington  
7 Constitution (Declaratory relief under Rev. Code of Wa. 7.24.010)**

8 6673. Plaintiffs incorporate herein by reference each and every  
9 allegation contained in the preceding paragraphs of this Complaint as  
10 though fully set forth herein.  
11

12 674. Article I, Section 16 of the Washington Constitution provides  
13 that just compensation be provided prior to any taking of property for  
14 public use and prohibits taking of private property for private use.  
15

16 6875. Washington courts have routinely held that the Washington  
17 Constitution provides just compensation to property owners when their  
18 land is taken because the law seeks to bar the government from forcing  
19 some people alone to bear public burdens which, in all fairness and  
20 justice, should be borne by the public as a whole. "The talisman of a  
21 taking is government action which forces some private persons alone to  
22 shoulder affirmative public burdens, 'which, in all fairness and justice,  
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28 COMPLAINTFIRST AMENDED COMPLAINT - 35

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1 should be borne by the public as a whole.' " *Mission Springs, Inc. v. City*  
2 *of Spokane*, 134 Wn.2d 947, 964 (1998) (quoting *Armstrong v. United*  
3 *States*, 364 U.S. 40, 49 (1960)).

4  
5 **6976.** Moreover, the principle behind the concept of just  
6 compensation for property taken for public use is to put the owner in as  
7 good a position financially as he or she would have occupied if his or her  
8 property had not been taken. *Central Puget Sound Regional Transit*  
9 *Authority v. Heirs and Devisees of Eastey*, 135 Wn. App. 446, 455  
10 (2006).

11  
12 **707.** Prohibiting Plaintiffs from rightfully collecting rent from their  
13 tenants in the State of Washington, in exchange for the tenants' lawful  
14 possession of Plaintiffs' properties, despite other compliance measures  
15 being taken to satisfy the public health interests at stake and to  
16 financially compensate those affected by COVID-19, violates Plaintiffs'  
17 fundamental Constitutional rights.

18  
19 **718.** Additionally, the taking of Plaintiffs' property interests are not  
20 for public use at all, but for the private use of tenants. No member of  
21 the public, much less the public as a whole, has a right to use those

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28 **COMPLAINTFIRST AMENDED COMPLAINT** - 36

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1 tenancies or avoid paying rent for occupying a property. Unlike the  
2 Fifth Amendment to the United States Constitution, Article I, Section  
3 16 of the Washington constitution is explicit: “Private property shall  
4 not be taken for private use.” *See also State ex rel. Washington State*  
5 *Convention and Trade Center v. Evans*, 136 Wn.2d 811 (1998) (“The  
6 constitution prohibits the taking of private property for a private use.”)  
7 The Proclamations are in violation of the explicit prohibition in Article I,  
8 Section 16 of the Washington state constitution on the state taking  
9 private property for private use.

14 **729.** Plaintiffs seek a declaratory judgment of rights and obligations  
15 under the Washington Uniform Declaratory Judgment Act, Chapter  
16 7.24 Rev. Code of Wa. and Civil Rule 57. An actual dispute exists  
17 between Plaintiffs and Defendants whose interests are genuinely  
18 opposing in nature. These disputed interests are direct and substantial.  
19 A judicial determination can provide a final and conclusive resolution as  
20 to the parties’ rights and responsibilities.

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28 **COMPLAINTFIRST AMENDED COMPLAINT** - 37

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**FIFTH FOURTH CLAIM FOR RELIEF**

## Violation of the Due Process Clause of the Fourteenth Amendment (Declaratory relief under 42 U.S.C. § 1983)

8073. Plaintiffs incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

**8174.** The Due Process Clause of the Fourteenth Amendment to the United States Constitution stands as an additional constitutional hurdle to the Governor's enactment of the Proclamations. The Due Process Clause "provides heightened protection against government interference with certain fundamental rights and liberty interests," including the "specific freedoms protected by the Bill of Rights" and "those fundamental rights and liberties which are, objectively, 'deeply rooted in this Nation's history and tradition,'" such as rights in property. *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997) (quoting *Moore V. E. Cleveland*, 431 U.S. 494, 502 (1977)). Thus while the "police power" of the government may be broad, it "must be

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1 exercised within a limited ambit and is subordinate to constitutional  
2 limitations.” *Panhandle E. Pipe Line Co. v. St. Highway Comm’n of*  
3 *Kansas*, 294 U.S. 9613, 622 (1935).

4  
5 **8275.** The State’s police power therefore does not afford “unrestricted  
6 authority to accomplish whatever the public may presently desire.”  
7  
8 *Panhandle E. Pipe Line Co. v. St. Highway Comm’n of Kansas*, 294 U.S.  
9  
10 613, 622 (1935). Instead, “[i]t is the governmental power of self-  
11 protection and permits reasonable regulation of rights and property in  
12 particulars essential to the preservation of the community from injury.”  
13  
14 *Id.*

15  
16 **8376.** Therefore, “a regulation that fails to serve any legitimate  
17 governmental objective may be so arbitrary or irrational that it runs  
18 afoul of the Due Process Clause.” *Lingle*, 544 U.S. at 542; *Rea v.*  
19  
20 *Matteucci*, 121 F.3d 483, 485 (9th Cir. 1997) (under Due Process Clause  
21 a “federal interest remains in protecting the individual citizen from  
22 state action that is wholly arbitrary or irrational”). Furthermore, a law  
23 violates the Due Process Clause if it “fails to provide a person of  
24 ordinary intelligence fair notice of what is prohibited, or is so standard  
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28 **COMPLAINTFIRST AMENDED COMPLAINT** - 39  
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1 less that is authorizes or encourages seriously discriminatory  
2 enforcement.” *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253  
3 (2012) (quoting *United States v. Williams*, 25 553 U.S. 285, 306 (2008)).  
4

5 **8477.** The Proclamations and enforcement thereof, violate Plaintiffs’  
6 substantive due process rights secured by the Fourteenth Amendment  
7 to the U.S. Constitution. Under the Due Process Clause of the  
8 Fourteenth Amendment, no State shall “deprive any person of life,  
9 liberty, or property, without due process of law.” The fundamental  
10 liberties protected by the Due Process Clause include most of the rights  
11 enumerated in the Bill of Rights. *Duncan v. Louisiana*, 391 U.S. 145,  
12 147-149 (1968). In addition, these liberties extend to personal choices  
13 central to individual dignity and autonomy, including personal choices  
14 regarding one’s choice of livelihood. Additionally, housing providers are  
15 denied access to the courts for relief, which is another due process  
16 violation.  
17  
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19 **785.** The Proclamations, which expressly deprive Plaintiffs of their  
20 rights and liberties in the use of their properties, did not afford  
21 Plaintiffs a constitutionally adequate hearing to present their case to  
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23 **COMPLAINTFIRST AMENDED COMPLAINT** - 40

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28 STEPHENS & KLINGE LLP  
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1 disallow the Eviction Moratorium, and specifically the unreasonable  
2 prohibition on the collection of rent and termination of rightful eviction  
3 processes. As a result of the Proclamations, Plaintiffs are unjustifiably  
4 prevented from being able to rightfully use their properties and  
5 mitigate damages where tenants fail to pay rent. At a minimum,  
6 Plaintiffs aver that Plaintiffs should be able to continue to collect rent  
7 from those tenants that are able to pay even a reasonable portion of the  
8 total amount of rent due and owing, and should be allowed a forum to  
9 contest a tenant's claim concerning qualifications for protections under  
10 the Proclamations. *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398,  
11 445 (1934).

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17 **8679.** Because the Governor's decision in issuing the Proclamations  
18 was made in reliance on procedurally deficient and substantively  
19 unlawful processes, Plaintiffs were directly and proximately deprived of  
20 the rightful use of their properties, and consequently, their ability to  
21 lawfully operate their properties without unconstitutional government  
22 overreach.

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28 **COMPLAINTFIRST AMENDED COMPLAINT** - 41

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1 807. Because the Governor's decisions were made without regard to  
2 the United States and Washington Constitutions, Plaintiffs were  
3  
4 directly and proximately deprived of their property rights absent  
5 substantive due process of law, in violation of the Fourteenth  
6 Amendment to the United States Constitution.  
7

8 818. Plaintiffs have no adequate remedy at law and will suffer  
9  
10 continued serious and irreparable harm to their constitutional rights  
11 unless the Defendant is enjoined from implementing and enforcing the  
12  
13 Eviction Moratorium in the Proclamations.

14       829. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled  
15 to declaratory relief and temporary, preliminary, and permanent  
16 injunctive relief invalidating and restraining enforcement of the  
17 Proclamations.

20 8390. Plaintiffs find it necessary to engage the services of private  
21 counsel to vindicate its rights under the law. Plaintiffs are therefore  
22 entitled to an award of attorney's fees pursuant to 42 U.S.C. § 1988.  
23

## REQUESTED RELIEF

26 WHEREFORE, Plaintiffs request that this Court:

28 | COMPLAINTFIRST AMENDED COMPLAINT - 42

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1       1. Issue a declaratory judgment that the Proclamations are null and  
2       void, and of no effect, as:

3           a. arbitrary and capricious, an abuse of discretion, or otherwise not  
4       in accordance with the United States and/or Washington Constitutions  
5       as violating of the Contracts Clauses of Article I, Section 10 ~~and Article~~  
6  
7 ~~I, Section 23~~ of the United States ~~and Washington~~ Constitutions;  
8  
9           b. unconstitutional under the Fifth Amendment;  
10          c. unconstitutional under the Fourteenth Amendment;  
11          d. a violation of 42 U.S.C. § 1983 as a deprivation of Plaintiff's  
12       members' rights, privileges, and immunities secured by the United  
13       States Constitution and/or laws of the United States.

14       2. Permanently enjoin the Governor and Attorney General and all  
15       persons and entities in active concert or participation with them from  
16       enforcing the Proclamations;

17       3. Award Plaintiff its costs and reasonable attorney's fees incurred in  
18       this action pursuant to 42 U.S.C. § 1988 and other applicable law; and

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COMPLAINTFIRST AMENDED COMPLAINT - 43  
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7 4. Grant all other such relief to Plaintiffs as the Court may deem  
8 proper and just.

10 || Dated this 29<sup>th</sup> day of ~~October~~April, 20210,

Stephens & Klinge LLP

/s/ Richard M. Stephens  
WSBA No. 21776  
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28 | COMPLAINTFIRST AMENDED COMPLAINT - 44

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